

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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DEBORAH WARDLY,

Plaintiff,

v.
HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY; DOES I through V;
ROE CORPORATIONS I through V, inclusive,

Defendants.

Case No. 2:11-CV-00037-RLH-RJJ

ORDER

Defendant's Motion to Strike Demand
for Jury Trial. (#16)

This matter comes before the Court on Defendant's Motion to Strike Plaintiff's Demand for Jury Trial (#16).

BACKGROUND

Plaintiff, Deborah Wardly, filed the Complaint (#1) against Defendant, Hartford Life and Accident Insurance Company (Hartford), on January 7, 2011. Wardly later filed an Amended Complaint (#8) on March 25, 2011. Hartford then filed an Answer to the Amended Complaint (#10) on April 22, 2011. Finally on May 20, 2011, Wardly demanded Trial by Jury (#13).

ANALYSIS

The Seventh Amendment of the Constitution preserves the right of trial by jury. However, to demand a trial by jury the party must serve the other party with a written demand no later than 14 days after the last pleading directed to the issue is served. FED. R. CIV. P. 38(b)(1). Additionally, FED. R. CIV. P. 38(d) states: "A party waives a jury trial unless its demand is properly served and filed."

Here, Wardly demanded a trial twenty-eight days after the last pleading directed to the issue was served (the answer to the amended complaint). Thus, it is clear that Plaintiff has not


1 complied with Rule 38(b)(1).

2 The Ninth Circuit has held that district courts, at their discretion, may order jury trials on
3 untimely motions. “That discretion is narrow, however, and does not permit a court to grant relief
4 when the failure to make a timely demand results from an oversight or inadvertence.” *Pacific*
5 *Fisheries Corp. V. H.I.H. Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001) (citing
6 *Lewis v. Time Inc.*, 710 F.2d 549, 556-57 (9th Cir. 1983)). Plaintiff did not file a response.
7 Because Wardly failed to file a timely response indicating any justification for the delay, Plaintiff
8 has waived her right to a Jury Trial pursuant to FED. R. CIV. P. 38(d).

9
10 **CONCLUSION**

11 Based on the foregoing, and good cause appearing therefore,
12 IT IS HEREBY ORDERED that Defendant’s Motion to Strike Demand for Jury Trial
13 (#16) is **GRANTED**.

14 DATED this 12th day of July, 2011.

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20 ROBERT J. JOHNSTON
21 United States Magistrate Judge
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